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Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D. C. 20463

Re: MUR 4389 and 4652

To whom it may concern:

I acknowledge receipt of your letter of March 5, 1999, and the gracious extension to me of additional time to this date by Eugene Bull. I am concerned about your sudden reappearance in light of the fact that three full years have passed since the events in question, during which time the California Fair Political Practices Commission and the Orange County District Attorney both concluded that there was nothing to the allegations made against me.

Your analysis is based on supposition and assertions that are simply incorrect. I wish therefore to correct the record which, when corrected, demonstrates that there is simply nothing here on which you have any basis to act against me.

I do have to preface my remarks by saying that I cannot be held personally responsible for anything that the Prince Committee or Debra Lee LaPrade or Paul LaPrade or James Prince or, for that matter, the Orange County Democratic Central Committee, may have said or not said, done or not done, since 1996, when my political opponents chose to run to the newspapers with a fabricated story with which they hoped to destroy me politically, personally and financially. To the extent that your analysis is based on the self-serving or even malicious comments or statements of others, or their failure to say anything, I respectfully request that those conclusions be withdrawn or disregarded.

In particular, although it appears to me as it does to you that there may indeed have been a Prince family "scheme to circumvent the contribution limits established by the Act", that is something for which Mr. Prince, his sister, his family and his committee must take complete responsibility. It was most emphatically not something in which I participated, or of which I had any knowledge, or for which I will or should take any responsibility whatsoever.

The Commission's conclusion, that I "was likely aware" of this

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scheme, is thus not only objectively incorrect and unsupported by any facts, it is based upon a fundamental misconception of the realities of political life in Orange County, California.

Since the Republican Party took over the political universe in Orange County in the early 1980's, the Orange County Democratic Party organization has been marginalized. Every successful Democratic candidate, and every reasonably well-funded unsuccessful Democratic candidate, has developed his or her own organization and finances, wholly independent of the County party and, indeed, as was the case in 1996, each such candidate carefully screened his or her intentions, operations, plans and expenditures from the party organization in the often articulated dual belief that (a) we were too useless to be of any value and (b) anything disclosed to the party organization would be leaked to other candidates. This view was expressed to me by all three of the candidates in the 46th Congressional District in the March 1996 primary at various times.

It was, indeed, the first of these reasons -- the low regard in which the OCDP was held because of its utter invisibility -- that impelled me to leap at the opportunity to send a mailer to the Democratic voters in the central part of Orange County, where the bulk of Democratic registration is concentrated, that would demonstrate that the party organization actually existed and was actually capable of doing something to advance the party name.

I was told nothing of Prince's plans and knew nothing of those plans, and did not in any way act on the basis of anything that I knew, was told or even surmised about such plans.

Your analysis also states that "the evidence suggests" that I knew that Debra LaPrade was Jim Prince's sister. There is no such evidence. I did not know and I had no reason to know. If I had known, as I have said repeatedly, I would have declined the contribution if on no other ground that it would have looked as if the party or I were taking sides to take money from the sister of one of the candidates, and my firm policy was to work very hard to remain neutral so that each of our candidates, whoever he or she turned out to be, would have no reason not to cooperate with my plans for a coordinated effort.

In our phone conversations years ago Mr. Bull expressed surprise, which has found its way into your analysis in the characterization "implausible", that I did not find out that Debra LaPrade was Prince's sister. The question assumes that I would have any purpose or reason (not knowing of the Princes' scheme) to cross-examine a potential generous donor on her antecedents. In hindsight perhaps it looks obvious to you, but with the

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opportunity to put the name of the Orange County Democratic Party in front of the Democratic voters in Orange County it did not occur to me that this was called for or necessary. And the fact that Debra LaPrade "never denied" that she told me who she was is obviously meaningless; even if she had told you that she had told me who she was it still would not be true.

In fact, the theory articulated falls apart on the basis of one simple fact. There was no conceivable benefit to me to participate in the scheme that you describe. Prince was unknown to me prior to his campaign. I had no personal or political stake in the outcome of the primary; I merely wanted the best candidate to win and, in fact, I did not think that Prince presented himself particularly well when I saw him speak. And in a primary in which there was a fair amount of personal acrimony it hardly served my purposes as Chair of the party to take sides.

The analysis is also incorrect with respect to the banking of the check. The facts, once again, do not support the assumption.

When I was elected Chair in January of 1995 there was no one on the elected Central Committee who was willing to be treasurer. David Levy was finally prevailed upon to take that position and it was, in fact, a horrible experience for all of us. Not once during his tenure did Levy provide us with a balance sheet or any accounting of our finances, although I understand that he did file official reports. Moreover, he did not return telephone calls, did not deposit checks given to him and repeatedly failed to write checks that he was begged to write timely. And every time we reproached him with these matters he would blandly tell us that, if we liked, he could resign and then we would have no treasurer and have been unable to spend or collect any money under California and federal law. It was only by the sheerest good fortune that after Levy resigned we elected a new member to the Central Committee who happened to have sufficient financial experience to do the accounting necessary who agreed to serve as our treasurer.

The foregoing is the prologue to the events that happened. I received the check shortly before the primary and in order to be able to spend it, it was necessary for me to deposit it and write checks. From past horrible experience I knew that if I were able to find Levy and get the check to him in the next few weeks, a process that I had failed to do previously with much smaller checks and no time pressure, and if he deposited that check, something we already knew he was not doing because one of our local clubs was making regular contributions to the party and complaining to me that its checks were not being deposited, there

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was the virtual certainty that I would still never get him to write the timely checks necessary in order to get the mailer produced and mailed. We have no credit with printers and no one has credit with the Postal Service, and I had to write checks immediately.

I therefore did the next best thing. I took the check to Marine National Bank, the bank at which the Party's account was then being maintained and I opened up another account for the purpose of spending this money. In fact, it was not untypical of the Orange County Democratic Party to open separate accounts for special projects. Because I needed Levy's signature on the account but did not then have it, the bank accepted a signature card with my signature only and gave me a duplicate card for me to return to them with Levy's signature.

The fact that the mailer only contained one photograph and only two names was mostly a matter of fortuity. I had the name of a third candidate, Audrey Gibson in the 68th Assembly District on an earlier draft, but took her name off because the mailer was beginning to look cluttered, and I asked the Correa campaign for a photograph but they did not give me one.

Finally, the Commission's analysis completely overlooks the language of the mailer itself. In no manner, way, shape or form was it intended to nor did it "[e]xpressly advocate the election or defeat of a candidate" but instead, simply brought to the attention of voters the fact that certain candidates had been endorsed and, primarily, brought to the attention of the Democratic voters in central Orange County the fact that the Democratic party, separate from the various candidates, existed, since our invisibility was a source of embarrassment.

I describe the foregoing to show that an attempt to prove some culpable willful behavior on my part is not supported by any facts and that the assumptions and conclusions are not called for. To the contrary, my inability to locate the official treasurer and physically hand him the check so that he could do what the statute requires had no practical effect whatsoever. What I did was everything that Levy would have done were he competent and actually doing his job. Indeed, it is not unreasonable to consider me his de facto agent in light of his derelictions. Nor is there any evidence that I did know that Debra LaPrade was Jim Prince's sister nor any knowledge of the intentions of any member of the Prince family. Nor was it my intent, or even knowledge, that this was to be a direct contribution by the LaPrades to the Prince campaign and doing so would have been totally inconsistent with my entire course of conduct during the primary campaign.

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And it is hardly inconsistent with a legitimate belief that this expenditure was for exempt party-building purposes that any portion of that belief may have been honestly mistaken.

In short, there is simply no factual basis for the allegations.

Finally, in light of the broad holding of the Supreme Court in that case I do not see how the charges against me can possibly survive rendition of Colorado Republican Federal Campaign Committee v. Federal Election Commission, 518 U.S. 604 116 S.Ct. 2309 (1996). Your conclusions, presumptions and assumptions simply fly in the face of the Supreme Court's careful and emphatic distinction between constitutionally protected independent expenditures and direct contributions. See 518 U.S. at 616-617, 116 S.Ct. at 2316.

I therefore respectfully request that the matter be dropped.

Sincerely,



JAMES TOLEDANO

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